

## Department of the Navy, DoD

## § 719.155

the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) *Contents of applications.* All applications for relief shall contain:

- (1) Full name of the applicant;
- (2) Social Security number and branch of service, if any;
- (3) Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;
- (9) Type of court-martial which convicted the applicant, and sentence adjudged;
- (10) General grounds for relief which must be one or more of the following:
  - (i) Newly discovered evidence;
  - (ii) Fraud on the court;
  - (iii) Lack of jurisdiction over the accused or the offense;
  - (iv) Error prejudicial to the substantial rights of the accused;
  - (v) Appropriateness of the sentence;
- (11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant’s contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);
- (12) Any other matter which the applicant desires to submit;
- (13) Relief requested; and
- (14) Facts and circumstances to establish “good cause” for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and
- (15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant’s copy of the record of trial will *not* be forwarded with the application for relief, unless specifically

requested by the Judge Advocate General.

(e) *Signatures on applications.* Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant’s spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

[50 FR 23804, June 6, 1985]

### §§ 719.145–719.150 [Reserved]

#### § 719.151 **Furnishing of advice and counsel to accused placed in pre-trial confinement.**

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee’s right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

#### § 719.155 **Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.**

(a) *Statutory provisions.* 10 U.S.C. 874(b) provides that the “Secretary

concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.”

(b) *Submission procedures.* Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, VA 22332-2400. Except in unusual circumstances, applications will not normally be considered if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under 10 U.S.C. 874(b).

(c) *Contents of the application.* All applications shall contain:

- (1) Full name of the applicant;
- (2) Social Security Number, service number (if different), and branch of service of the applicant;
- (3) Present age and date of birth of the applicant;
- (4) Present residence of the applicant;
- (5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;
- (6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;
- (7) Offense(s) of which the applicant was convicted, and sentence finally approved from the trial which resulted in the punitive discharge or dismissal;
- (8) Date the punitive discharge or dismissal was executed;
- (9) Applicant's present marital status, and number and ages of dependents, if any;
- (10) Applicant's civilian criminal record (arrest(s) with disposition, and conviction(s)), both prior and subsequent to the court-martial which resulted in the punitive discharge or dismissal;
- (11) Applicant's entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);
- (12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant's full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to 10 U.S.C. 874(b) (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits, (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant's character primarily as reflected in the civilian community subsequent to the punitive discharge or dismissal which is the subject of the application);

(16) Any matters, other than the character affidavits, supporting the considerations described in subparagraph (18) below;

(17) Any other relief sought within the Department of the Navy and outside the Department of the Navy including dates of application and final dispositions;

(18) A statement by the applicant, setting forth the specific considerations which the applicant believes constitute “good cause,” so as to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. (In this connection, 10 U.S.C. 874(b) does not provide another regular or extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial which resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under 10 U.S.C. 874(b). As used in the statute, “good cause” was envisioned by Congress to encompass only Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes “good cause” under 10 U.S.C. 874(b), the primary Secretarial concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation. Material submitted by the 10 U.S.C. 874(b) applicant

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should be consistent with the foregoing.)

(d) *Signature on application.* Unless incapable of making application himself or herself, the applicant shall personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian and other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application for purposes of this paragraph only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

(e) *Privacy Act Statement.* Disclosure of personal information requested by paragraph (c) of this section is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

[47 FR 49645, Nov. 2, 1982, as amended at 50 FR 23804, June 6, 1985]

## PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

### Subpart A—Delivery of Personnel

SOURCE: 57 FR 5228, Feb. 13, 1992, unless otherwise noted.